

RESOLUTION NO. 03-092

Resolution of the Planning Commission of the City of San Jose approving a Site Development Permit Amendment to use certain real property described herein for the purpose of allowing parking lot reconfiguration and installation of a property-line fence within an existing parking area.

FILE NO. HA76-044-01

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on January 21, 2004, an application (File No. HA76-044-01) was filed for a Site Development Permit Amendment for the purpose of allowing reconfiguration of an existing parking lot and installation of a property-line fence, on that certain real property (hereinafter referred to as "subject property"), situate in the CG Commercial General and CO Commercial Office Zoning Districts, located on the northeasterly corner of The Alameda and West Julian Street; and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San Jose Municipal Code, the Director of Planning, Building and Code Enforcement conducted a hearing on said application; and

WHEREAS, on April 9, 2004, the Director of Planning, Building and Code Enforcement denied the application, from which decision the applicant has appealed to this Planning Commission; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San Jose Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "1095-1230 The Alameda, Fence Along Property Lines," received April 15, 2004. Said plan is on file in the Department of Planning, Building and Code Enforcement

and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this Planning Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE AS FOLLOWS:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The proposed site is located in the CO Commercial Office and CG Commercial General Zoning District.
2. This site has a designation of General Commercial with Neighborhood Business District Overlay (The Alameda Neighborhood Business District) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The subject site and surrounding sites are located within The Alameda Neighborhood Business District. The Neighborhood Business District is made up of individual retail and other commercial businesses that offer goods and services to the public.
4. The subject site and surrounding area is characterized by commercial buildings on individual parcels set close to The Alameda with parking located behind. The area behind the businesses on this block of The Alameda consists of a large open parking field.
5. In 1977, the Director of Planning approved a Site Development Permit (City File No. HD76-044) for the subject property, based on a plan submitted by the property owner that reflects the current striping of the site. This plan necessitates that drivers use the adjacent property for vehicle back-up space and circulation. Consistent with this design, the greater parking area has functioned as an integrated parking lot and the public has used it in this manner for at least 30 years.
6. The project proposes to install a fence along the easterly property line as shown on the proposed plans. The proposed fence would connect with the existing commercial buildings on the subject property and the existing fence around the single-family property located north of the subject site to “close off” the eastern edge of the subject property. The proposed fence includes an emergency crash gate (20 feet in width) on the property line shared with an adjoining parcel.
7. Section 20.100.630 specifies that the Director, or the Planning Commission on appeal, shall grant a Site Development Permit only if all of the following findings are made:
 - a. The interrelationship between the orientation, location and elevations of the proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

- b. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.
 - c. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.
 - d. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior hearing, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.
 - e. Traffic access, pedestrian access and parking are adequate.
 - f. The application is either consistent with the General Plan or counterbalancing considerations justify the inconsistency.
8. The Site Development Permit Amendment was denied by the Director of Planning on April 9, 2004, following a public hearing.
 9. The Director's decision to deny the subject Site Development Permit was based on inconsistency with the requirements of Title 20 of the San Jose Municipal Code and on inconsistency with the San Jose 2020 General Plan.
 10. On April 15, 2004, the applicant filed a Notice of Appeal of the Director's decision to deny the Site Development Permit Amendment (see attached). Along with the Appeal, the applicant provided revised plans with modifications to the parking lot design and revision to the width of the proposed emergency crash gate from 16 feet to 20 feet in width.
 11. The applicant owns the subject property and adjoining properties to the north and west. The applicant is co-owner of a triangular shaped property to the east, and does not own the two other properties to the east (Assessor's Parcel Numbers 261-02-030 and 261-02-032).
 12. The applicant has stated that the purpose of the fence is to prevent members of the public, both in vehicles and on foot, from trespassing across his property to access the businesses located at 1077 and 1081 The Alameda.
 13. The applicant has indicated that the adjacent property owners, through private litigation involving the applicant and the adjacent property owners but not the City, have signed releases agreeing not to object to the installation of a barrier on the subject property.
 14. The applicant would need no land use permit approvals from the City to erect signage at the rear of the property or to hire security guards.
 15. Fences do not currently separate the parking on individual lots within the surface parking area.
 16. The Planning Division has received correspondence from members the public regarding the proposed fence. Many of the correspondents stated their opposition to the proposed fence due to concern about accessibility related to the Americans with Disabilities Act, detrimental impacts to the neighborhood business district, access to the businesses located at 1077 and 1081 The

Alameda, and concern about the effect of parking lot fencing on emergency vehicle response time.

17. Section 20.100.600 of the Zoning Code states that the purpose of the Site Development Permit process is to promote orderly development, to enhance the character, stability, integrity, and appearance of neighborhoods and zoning districts, to maintain and protect the stability and integrity of land values, and to secure the general purposes of the Zoning Ordinance and the General Plan.
18. The proposed fence bisects a parking area made up of several individual parcels (including the subject parcel) which have been designed to function as an integrated parking lot for many years. Aerial photographs from as early as 1974 reveal that the parking layout has existed in its present configuration since at least that time.
19. The proposed fence limits pedestrian movements between residential and commercial areas and between commercial businesses and is contrary to the goal of revitalizing The Alameda Business District.
20. The applicant originally proposed only a property-line fence along the eastern boundary of the subject site; the applicant's current proposal also includes the isolation of an existing parking lot located on the subject site that has been integrated with the adjacent property for many decades. The existing parking lot striping plan, which requires vehicles to utilize the adjacent property to access striped parking spaces on the subject site, was established in 1974 or earlier based on review of aerial photography.
21. The existing integrated parking lot design is one the property owner proposed and accepted as part of Site Development Permit File No. HD76-044.
22. To the extent that access easements do not exist across this property, the applicant may decide to take measures to preclude public access; however, the Planning Director, or the Planning Commission on appeal, may not approve any Site Development Permit to assist the applicant in enforcing private property rights unless the findings required by the Zoning Code can be made.
23. The General Plan Neighborhood Identity Goal states that the City should: "Enhance the sense of neighborhood identity in San Jose."
24. Policy No. 3 of the Neighborhood Identity Goal states that: "Public and private development should be designed to improve the character of existing neighborhoods. Factors that cause instability or create urban barriers should be discouraged or removed."
25. The General Plan Commercial Land Use Goal states that the City should: "Provide a pattern of commercial development which best serves community needs through maximum efficiency and accessibility."
26. Policy No. 4 of the Commercial Land Use Goal states that the City should: "Encourage the upgrading, beautifying, and revitalization of existing strip commercial areas and shopping centers."

27. The General Plan Transportation Goal states that the City should: “Develop a continuous, safe, accessible, interconnected high quality pedestrian environment that promote walking as a desirable mode of transportation.”
28. Pedestrian Facilities Policy No. 17 states that: “Pedestrian travel should be encouraged as a mode of movement between residential and non-residential areas throughout the city and in activity areas such as schools, parks, transit stations, and in urban areas, particularly in the Downtown Core and Frame areas and neighborhood business districts by providing pedestrian facilities that are pleasant, safe, accessible to people with disabilities, and convenient.”
29. The Zoning Code’s articulated purpose for the Site Development Permit process focuses on broad public objectives, such as promoting orderly development and securing the general purposes of the Zoning Ordinance and General Plan.
30. The site development permit process is not established to enforce private property rights, but rather, serves as a control on these rights where they conflict with the broader purposes of the Zoning Code and General Plan. The lack of an easement (if, indeed, no easement exists) does not necessitate the City’s approval of a physical barrier that is not consistent with the purposes of the Zoning Code and General Plan.
31. The applicant submitted a letter to the Planning Commission on June 9, 2004. In the letter, the applicant’s lobbyist/attorney stated that (in summary) there is an important need for the fence, the rationale for denying the application is flawed, the proposed fence is not incompatible or inconsistent with the surrounding neighborhood, and that the Site Development Permit Amendment should be granted.
32. The decision to not approve the fence is beyond the City’s purview because the Superior Court of Santa Clara County has made it clear that cross-access easements do not exist.
33. There is a conflict between the goals of the City and the rights of an owner to protect against trespass on his property. If the property owner is not allowed some sort of a restrictive mechanism, it is an attractive nuisance.
34. The Superior Court of Santa Clara County determined that the appellant has the right to prevent people from trespassing on his property and to build a fence.

The Planning Commission, based on the facts above, finds the following:

1. The proposed fence is not consistent with the development pattern of the surrounding area.
2. The proposed fence is not consistent with the pedestrian orientation of the General Plan Neighborhood Business District designation or with General Plan goals and policies concerning commercial development, pedestrian accessibility and urban barriers.
3. The proposed fence is not consistent with the General Plan Neighborhood Identity Goal which states that the City should: “Enhance the sense of neighborhood identity in San Jose.”

4. The proposed fence is not consistent with Policy No. 3 of the Neighborhood Identity Goal which states that, "Public and private development should be designed to improve the character of existing neighborhoods. Factors that cause instability or create urban barriers should be discouraged or removed."
5. The proposed fence is not consistent with the General Plan Commercial Land Use Goal, which states that the City should, "Provide a pattern of commercial development which best serves community needs through maximum efficiency and accessibility."
6. The proposed fence is not consistent with Policy No. 4 of the Commercial Land Use Goal which states that the City should, "Encourage the upgrading, beautifying, and revitalization of existing strip commercial areas and shopping centers."
7. The proposed fence is not consistent with the General Plan Transportation Goal which states that the City should: "Develop a continuous, safe, accessible, interconnected high quality pedestrian environment that promote walking as a desirable mode of transportation."
8. The proposed fence is not consistent with the Pedestrian Facilities Policy No. 17 which states that: "Pedestrian travel should be encouraged as a mode of movement between residential and non-residential areas throughout the city and in activity areas such as schools, parks, transit stations, and in urban areas, particularly in the Downtown Core and Frame areas and neighborhood business districts by providing pedestrian facilities that are pleasant, safe, accessible to people with disabilities, and convenient."
9. While the City recognizes that the applicant is not required, and the City is not requiring the applicant, to provide access to adjoining properties over the subject site, the current lack of an easement for access across the applicant's property constitutes an existing barrier to and does not foster an accessible, efficient, interconnected high quality pedestrian environment. The installation of a fence would create an additional physical barrier to achieving General Plan Goals for an accessible, efficient, interconnected, high quality pedestrian environment in the area of The Alameda Neighborhood Business District.
10. The current lack of an easement for access across the applicant's property constitutes an existing barrier to an accessible, efficient, interconnected high quality pedestrian environment.
11. The proposed installation of a 6-foot fence bisecting an open parking area is visually incongruous with surrounding development.
12. Although there are City ordinances and policies that discourage development such as the proposed fence within an existing surface parking area, there are solid legal findings that require the City to approve the proposed fence.

Based upon the above-stated findings, the Planning Commission concludes and finds that:

1. Under the provisions of Section 15303(e) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. This section pertains to the construction of

small new structures such as the proposed fence. The project will not have a significant adverse effect on the environment.

2. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.
3. Traffic access, pedestrian access and parking are not adequate.
4. This site has a designation of General Commercial with Neighborhood Business District Overlay on the adopted San José 2020 General Plan Land Use/Transportation Diagram. The existing commercial use of the site is consistent with this designation; however, the proposed fence is inconsistent with several goals and policies of the General Plan pertaining to the removal of urban barriers, the enhancement of neighborhood identity and the encouragement of high quality, interconnected, accessible, and efficient pedestrian environments. The proposed fence also does not encourage pedestrian travel in the neighborhood business district where the subject site is located.
5. The Commission believes it is legally compelled to grant the permit due to the outcome of the private litigation between the applicant and the property owners of the adjacent sites to the east (Assessor's Parcel Numbers 261-02-030 and 261-02-032).

Finally, based upon the above-stated findings, the Planning Commission overturns the Director's decision to deny the proposed application and approves the project.

APPROVED and issued this 9th day of June, 2004, by the following vote:

AYES: JAMES, LEVY, CAMPOS, DHILLON, PLATTEN, ZAMORA, ZITO

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

Chairperson

Stephen M. Haase, Secretary

Deputy

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

Attachments

EM:ll